



CGB-CC-0361

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December 30, 2005

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554
Attention: CGB Room 3-B431

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Federal Communications Commission
Office of Secretary

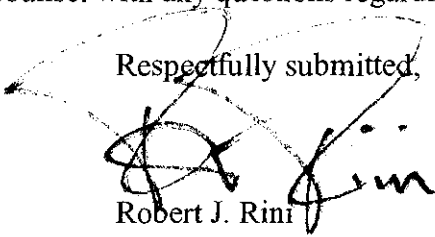
RE: Television Wisconsin, Inc. (FRN: 0002-7155-63)
Station WISC-TV/DT, Madison, WI (Facility ID: 65143)
Request for Exemption from Closed Captioning Requirement

Dear Ms. Dortch:

Enclosed on behalf of Television Wisconsin, Inc., ("Television Wisconsin"), by counsel and pursuant to Section 79.1(f) of the Commission's rules, are an original and two (2) copies of a Request for Exemption from Closed Captioning Requirement for Television Wisconsin's program "Urban Theater."

Please contact undersigned counsel with any questions regarding this request.

Respectfully submitted,


Robert J. Rini

cc: Amelia Brown, FCC

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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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)	
Television Wisconsin, Inc.)	CSR _____
Petition for Exemption from)	
Closed Captioning Requirements)	
)	
)	
To: Office of the Secretary)	
Media Bureau)	

Petition for Exemption from Closed Captioning Requirements

Television Wisconsin, Inc., (“Television Wisconsin”), by counsel and pursuant to Section 79.1(f) of the Commission’s rules, hereby requests an exemption from the closed captioning rules for a period of three years for a local music program it produces called “Urban Theater.” As shown herein, an exemption is proper because compliance with the rules presents an undue burden due to the cost of captioning relative to the revenues attributable to the “Urban Theater” program.¹

¹ An exemption is necessary because “Urban Theater” cannot be considered an exempt program under Section 79.1(d) of the Commission’s rules. Section 79.1(d) provides that any video programming or video programming provider that meets one of 13 criteria shall be exempt from captioning requirements:

- (1) programming subject to contractual captioning restrictions;
- (2) waiver of the captioning requirement by the FCC;
- (3) programming other than English or Spanish language;
- (4) primarily textual programming;
- (5) programming distributed between 2 a.m. and 6 a.m. local time;
- (6) interstitials, promotional announcements and public service announcements;
- (7) Educational Broadband Service programming;
- (8) locally produced and distributed non-news programming with no repeat value;
- (9) programming on new networks;
- (10) primarily non-vocal musical programming;
- (11) captioning expense in excess of 2% of gross revenues;
- (12) channels producing revenues of under \$3,000,000; and
- (13) locally produced educational programming.

Under the FCC Rules, “Urban Theater” cannot be deemed an exempt program. There are no contractual captioning restrictions, and the FCC has not yet waived the captioning requirement. “Urban Theater” is produced in English, is not primarily textual and is not transmitted solely in the late-night hours.

Background

Television Wisconsin is a FCC-licensed broadcaster and CBS affiliate in Madison, Wisconsin. Television Wisconsin operates WISC-TV, WISC-DT and a multicast UPN channel using a portion of the WISC-DT spectrum. Television Wisconsin produces the “Urban Theater” program and broadcasts it over WISC-TV, WISC-DT and on its multicast UPN channel.

The “Urban Theater” program is a weekly arts and entertainment program that showcases talent primarily from the Madison, Wisconsin area. Programs feature acts performing primarily vocal and instrumental music in a variety of genres and short interview segments. The show promotes local happenings in music and arts venues. As shown in the attached summary, “Urban Theater” is produced at an approximate yearly cost of \$11,232, with associated advertising revenue of \$2,600. The show has been on the air for five years. The show currently airs five times per week on WISC-TV/WISC-DT and five times per week on WISC-DT’s multicast UPN channel.² Television Wisconsin wishes to make this local program available for broadcast on commonly owned stations and to other third-party broadcasters in the area who may have an interest in a local music program.

Moreover, “Urban Theater” is not an interstitial, promotional announcement or a public service announcement, and it is not carried on an EBS station. While the program is locally produced and distributed non-news programming, the show has repeat value. In addition, WISC is not a new network. Furthermore, “Urban Theater” is musical programming, but it is not primarily nonvocal music. Also, the captioning expense does not exceed 2% of Television Wisconsin’s gross revenues and the channel does not produce annual revenues of under \$3 million. Finally, WISC-TV/WISC-DT is not a public television station, so “Urban Theater” does not constitute locally produced educational programming.

² “Urban Theater” is taped once per week, and four of the five weekly showings are replays of prior programs.

Basis for Exemption

Section 79.1(f) provides that a “video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements.”³ Petitions will be granted upon a showing that “compliance with the requirements to closed caption video programming would cause an undue burden [defined as] significant difficulty or expense.”⁴ The Commission will consider four factors in making an “undue burden” determination: (i) the nature and cost of the closed captions for the programming; (ii) the impact on the operation of the provider or program owner; (iii) the financial resources of the provider or program owner; and (iv) the type of operations of the provider or program owner. Congress did not require a Petitioner to satisfy all four factors to obtain relief.⁵ Television Wisconsin respectfully submits that, on balance, these factors support the requested exemption.

With respect to factor one, the nature and cost of the closed captions, Television Wisconsin submits that, as detailed in the attached affidavit of Thomas Bier, Vice President and Station Manager of Television Wisconsin, the station must rely on outside captioning services to comply with the FCC’s requirements. Based on existing captioning contracts, Television Wisconsin estimates that the cost to caption per hour would be \$80 per half hour, or \$4,160 annually. This is a significant expense, representing a 37% increase in the direct costs of producing the show.

Regarding factor two, the impact on Television Wisconsin’s operations, Television Wisconsin demonstrates in the attached affidavit that the cost of captioning far

³ 47 C.F.R. § 79.1(f)(1).

⁴ 47 C.F.R. § 79.1(f)(2); *see also* 47 U.S.C. § 613(e).

⁵ *See* 47 U.S.C. § 613(e).

exceeds the show's revenues. "Urban Theater" is currently produced at an approximate yearly cost of \$11,232, with associated advertising revenue of \$2,600. Given the costs to caption, adding additional expense at this time does not make good business sense because these additional costs tip the scales against economic viability for the program. Accordingly, if required to caption the program, Television Wisconsin would cease producing "Urban Theater."

Under the third factor, the financial resources of Television Wisconsin, the licensee submits that while the station is cash-flow positive after payment of its operating expenses, station revenues are reinvested in new equipment, including equipment needed in connection with the DTV transition and debt service. Capital needs and expenses result in no immediate economic return to the owners. Moreover, WISC is one of several commonly owned stations, and the cash flow from this station helps those other stations in their efforts to fund the costs of the DTV transition.⁶

Under factor four, the type of operations of Television Wisconsin, the station is operated by a family owned small business led by its president Elizabeth Murphy Burns. Television Wisconsin produces other local news and public affairs programs and is dedicated to serving the local needs of the community. Television Wisconsin believes that it is important to continue providing local programming. Despite its extensive roots in the Madison community and commitment to localism, Television Wisconsin's resources are far more limited than the national giants of the broadcasting industry. Accordingly, it must act prudently in making decisions about production costs of local programming where, as here, such costs constitute a significant expense.

⁶ These stations include four other TV stations: KXLY-TV (licensed to Spokane Television, Inc.), KAPP-TV and KVEW-TV (licensed to Apple Valley Broadcasting, Inc.), and WKBT-DT (licensed to QueenB Television, LLC), as well as 11 full-power AM/FM broadcast stations.

Conclusion

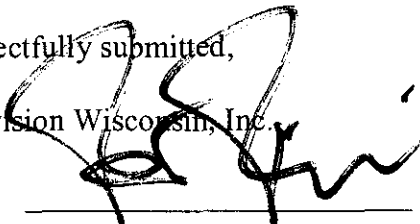
As demonstrated above, compliance with the captioning rule would pose a significant difficulty or expense and an “undue burden” for purposes of Section 79.1(f). For the foregoing reasons, Television Wisconsin respectfully requests an exemption for a period of three years from the closed captioning requirement for the “Urban Theater” program. This three-year period would give Television Wisconsin an additional opportunity to obtain advertising, sponsorships and syndication revenues to justify the costs of captioning.

Television Wisconsin requests FCC approval to continue carrying the program on Station WISC-TV, WISC-DT and the station’s multicast UPN channel and to make the program available for distribution on other broadcast stations without the requirement to provide closed captions.

Respectfully submitted,

Television Wisconsin, Inc.

By: _____

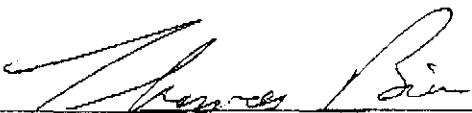

Robert J. Rini
Jonathan E. Allen
Rini Coran, PC
1615 L Street, NW, Suite 1325
Washington, DC 20036
202-296-2007
Counsel for Television Wisconsin, Inc.

AFFIDAVIT

I, Thomas Bier, under oath, hereby state as follows:

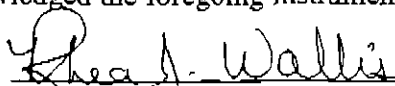
1. I am the Vice President and Station Manager of Television Wisconsin, Inc., licensee of Station WISC-TV and WISC-DT, Madison, Wisconsin. Television Wisconsin also owns and operates a multicast channel, UPN14, using a portion of the WISC-DT spectrum.
2. Television Wisconsin, Inc. produces and distributes "Urban Theater," a local 30-minute program that is carried on WISC-TV, WISC-DT and UPN14.
3. "Urban Theater" is a weekly arts and entertainment program that showcases talent primarily from the Madison, Wisconsin area. Each program features acts performing primarily vocal music in a variety of genres and an interview segment. The show promotes local happenings in music and arts venues. As shown in the attached summary, "Urban Theater" is produced at an approximate yearly cost of \$11,232 with associated advertising revenue of \$2,600. The show is taped once per week and debut episodes and repeats are aired five times per week on WISC-TV and WISC-DT and five times per week on UPN14.
4. "Urban Theater" is locally produced and distributed non-news programming. The program is aired several times per week, it deals primarily with music acts of local interest. It has some repeat value because the programming is not linked to a specific time period.
5. Television Wisconsin relies on outside contractors for closed captioning. Based on Television Wisconsin's most recent captioning contract, the approximate cost to caption comparable programming is \$80 per half hour of programming, or \$4,160 per program per year. As shown in the attached summary, the cost of captioning alone exceeds the show's advertising revenue.
6. Although "Urban Theater" is not a profitable program, Television Wisconsin airs the program to provide local programming of interest to the viewing public in our community that would not otherwise be available. Television Wisconsin is cash-flow positive after payment of its operating expenses, but station revenues are reinvested in new equipment, including equipment needed in connection with the DTV transition and debt service. Revenues from this station are used to help other commonly owned stations fund the costs of the DTV transition.
7. Absent an exemption from the captioning requirement, Television Wisconsin will cease producing and broadcasting this local program due to the additional financial burden associated with the captioning costs. Television Wisconsin intends to use any exemption period granted by the FCC for purposes of finding alternative means of funding for the program, including outreach to other Wisconsin broadcasters who may want to provide the program.

The affiant further says not.


Thomas Bier

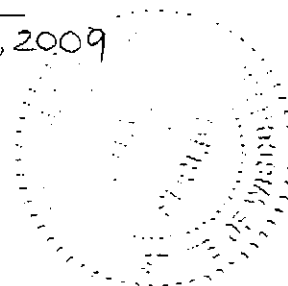
STATE OF WISCONSIN
COUNTY OF DANE

On this 30 day of December, 2005, personally appeared before me, the above named Thomas Bier, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing instrument to be his free act and deed, before me.


Notary Public

Print Name Rhea J. Wallis

My Commission expires: August 23, 2009



Urban Theater				
Personnel	Rate	Annual Rate		Show Revenue
Host	\$200.00/show	\$10,400		\$50.00/show
Tape (60m)	\$16.00/show	\$832		
	Annual Total:	\$11,232		\$2,600